

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



Michael and Julia Kane
21 Labrie Lane
Holyoke, MA 01040

ADMINISTRATIVE ORDER
No. WD 2004-25

Re: Washington Tax Map 20, Lot 121-3
Nuthatch Way, Highland Lake
Washington, New Hampshire
File # 2003-2192

November 17, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Michael and Julia Kane pursuant to RSA 483-B. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Michael and Julia Kane are individuals having a mailing address of 21 Labrie Lane, Holyoke, MA 01040.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.
2. Michael and Julia Kane are the owners of a parcel of land located on the shore of Highland Lake, in Washington, NH, more particularly identified on Town of Washington Tax Map 20 as Lot 121-3 ("the Property").
3. On September 22, 2003, DES personnel inspected the property and observed the following:
 - a. An area of the Property measuring approximately 130 feet from the reference line of Highland Lake, by 175 feet in width, had been significantly altered. Two trees were left standing along 175 feet of frontage.
 - b. Approximately 20,000 square feet of soil within this area was disturbed with potential to erode into Highland Lake. Numerous rocks, had been moved, showing scrape marks from machinery.

- c. Within 50 feet of the lake reference line, evidence including holes showing "stranded roots", and a stump pile containing at least 50 stumps, indicate stumps were removed within this area.
 - d. Erosion and sedimentation controls were not in place to protect the water quality of Highland Lake.
4. RSA 483-B:9, V(c)(1) requires that, "All new structures, modification to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under 541-A, relative to terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction."
 5. RSA 483-B:9, V(a)(2)(A) requires that, "Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose within a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place."
 6. RSA 483-B:9, V(a)(2)(E) requires that, "Stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically approved by the department, pursuant to RSA 482-A."
 7. On October 29, 2003, DES issued Letter of Deficiency #SP-2003-24 (the "LOD") to Michael and Julia Kane. The LOD was returned in the certified mail envelope as "unclaimed".
 8. On November 25, 2003, DES resent the LOD first class mail. To date, DES has not received a response from Michael and Julia Kane regarding the LOD.

D. DETERMINATION OF VIOLATIONS

1. Michael and Julia Kane have violated RSA 483-B:9, V(c)(1) by failing to install erosion and siltation control measures, during and after excavation and earth moving activities were conducted on the Property.
2. Michael and Julia Kane have violated RSA 483-B:9, V(a)(2)(A) by removing more than 50 percent of the basal area of trees and more than 50 percent of the total number of saplings, and by failing to maintain a healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems within the natural woodland buffer.
3. Michael and Julia Kane have violated RSA 483-B:9, V(a)(2)(E) by removing stumps within 50 feet of the Highland Lake reference Line.

E. ORDER

Based on the above findings, DES hereby orders Michael and Julia Kane as follows:

1. Within 30 days of this Order, submit a restoration plan to DES for review and approval. The restoration plan shall include the following:

- a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions; and
 - ii. proposed conditions once restoration is completed;
- b. A detailed description of the proposed means of erosion and sedimentation controls and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area. A plantings plan showing the number, species, and location of proposed plantings. Saplings shall be no less than 6 feet in height, and all plantings shall be selected from the list of New Hampshire native and naturalized species. Saplings should be proposed in areas where trees were removed;
- d. A detailed description of how the disturbed areas will be restored. This should be accomplished by restoring the disturbed areas to original grade, applying a sufficient amount of loam to sustain vegetation, stabilization with jute matting, and planting with native and naturalized species.
- e. A description of the proposed restoration sequence and methods for accomplishing the restoration, and timeframe for completion.

2. On or about April 1, 2005, weather permitting, implement the restoration plan only after receiving written approval and as conditioned by DES. Restoration shall be completed by no later than May 31, 2005.

3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Allyson L. Gourley
DES Water Division
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: agourley@des.state.nh.us

F. APPEAL

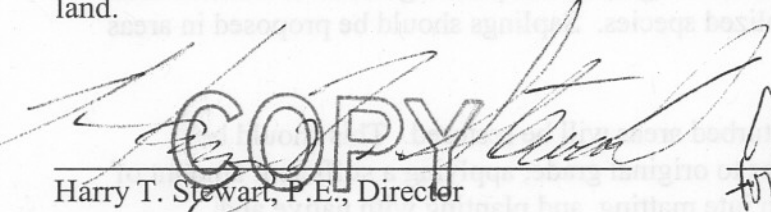
Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council in accordance with RSA 483-B:14 and NH Administrative Rules Env-WC 200. Such appeal must be filed with the Council within 30 days of the date of this Order and must be addressed to Chairman, Water Council, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at


<http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Michael and Julia Kane of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 483-B:18 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Michael and Julia Kane's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7002 3150 0001 5411 0497

cc: Gretchen R. Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Washington Conservation Commission
Washington Board of Selectmen